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CIRCUIT COURT  
FOR MULTNOMAH COUNTY

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

DOUG WEISS, RON ELSNER, STANLEY )  
G. LOMNICKY, HARVEY E. YOUNG and )  
JOHN DUVALL, )

Plaintiffs, )

vs. )

LINNTON PLYWOOD ASSOCIATION, )  
JIMMY STAHLEY, GAIL HOLTER, )  
GENE ELSEY and MIKE BALTO, )

Defendants. )

No. ~~01~~080710423

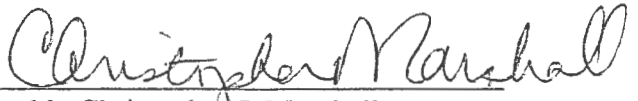
ORDER ON JOINT MOTION TO  
APPROVE STIPULATION FOR  
SETTLEMENT

This matter came before the Honorable Christopher J. Marshall on October 12, 2009. Plaintiffs appeared through their attorney, Edward H. Trompke, and Defendants appeared through their attorney, Paul B. George (telephone appearance) and Nancie K. Potter. The Court had previously received and reviewed the motion and supporting memorandum and declarations; the Objections of Barry Axtell, Max M. Smith, Ronald E. Thomas, Holly D. Jackson, and Karen S. Fitch (on behalf of the Estate of Herbert A. Randall), and Francis V. L'Amie. The Court heard all arguments by the attorneys for all parties and by Mr. Thomas, Ms. Randall, and Mr. Laney. Judge Marshall then heard oral argument by the attorneys for

1 all parties and by Mr. Thomas, Ms. Jackson and Mr. Laney. Being thus fully advised in the  
2 premises, it is hereby

3 ORDERED, that the Joint Motion to Approve Stipulation for Settlement is granted.  
4 Defendants may enter a judgment of dismissal without delay.

5  
6 DATED this 23<sup>rd</sup> day of October, 2009.

7  
8   
9 The Honorable Christopher J. Marshall

10  
11 Presented by:

12 Nancie K. Potter, OSB # 80152  
13 Roberts Kaplan LLP  
14 601 SW Second Ave., Suite 1800  
15 Portland, OR 97204  
16 (503) 221-0607  
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5 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
6 FOR THE COUNTY OF MULTNOMAH

7 DOUG WEISS, RON ELSNER, STANLEY )  
8 G. LOMNICKY, HARVEY E. YOUNG and )  
9 JOHN DUVALL, )  
10 Plaintiffs, )

Case No. 0807-10423

**STIPULATION FOR SETTLEMENT**

11 vs. )

12 LINNTON PLYWOOD ASSOCIATION, )  
13 JIMMY STAHLEY, GAIL HOLTER, )  
14 GENE ELSEY, MIKE BALTO, and DOES )  
15 1 THROUGH 10, )  
Defendants. )

16  
17 **INTRODUCTION**

18 This Stipulation for Settlement (the "Stipulation") is by and between Linnton Plywood  
19 Association, an Oregon cooperative corporation ("Association")<sup>1</sup>, Jimmy Stahly (referred to  
20 incorrectly in the case caption as Jimmy Stahley), Gail Holter, Gene Elsey, Mike Balto  
21 (collectively "Individual Defendants" herein) and Doug Weiss, Ron Elsner, Stanley G.  
22 Lomnicky, Harvey E. Young and John Duvall (collectively "Plaintiffs" herein).

23 ////

24 ////

25  
26 <sup>1</sup> The definitions set forth herein are those defined in the Memorandum of Law in Support of  
Joint Motion to Approve Stipulation for Settlement.

1    **I. RECITALS**

2       A.     On July 22, 2008, Plaintiffs filed a complaint (the "Complaint") in the Circuit  
3             Court of the State of Oregon for the County of Multnomah Case No. 0807-10423  
4             alleging that the Liquidation Plan was improperly adopted by the Association and  
5             that the Liquidation Plan was in breach of the Settlement Agreement. The  
6             Association and the Individual Defendants, each of whom is a member of the  
7             Board of Directors of the Association, deny each of the allegations of the  
8             Complaint, but have not been required to file an answer to the Complaint by  
9             virtue of the fact that the Association and the Individual Defendants have filed a  
10            motion, now pending before the Court, for the complete dismissal of the  
11            Complaint on the grounds it is untimely and ill founded.

12       B.     Many of the current and former members of the Association are elderly and  
13             depend heavily upon the expectation that they will receive some distribution  
14             through the liquidation of the Association's assets to pay their "Retains".

15       C.     The Parties agree that protracted litigation, no matter who prevails, will work to  
16             the detriment of the Association and its current and former members by delaying  
17             the close of the sale of the Real Property, the distribution of net proceeds and  
18             require all Parties to incur substantial costs and fees.

19       D.     The Parties have now agreed to settle the claims alleged in the Complaint and all  
20             other claims between them, both in their individual capacities and their derivative  
21             capacities. The settlement as set forth below is conditioned upon the final  
22             approval by the Court of all of its terms and conditions.

23  
24       NOW THEREFORE IN CONSIDERATION OF THE RECITALS AND COVENANTS  
25       AND CONDITIONS HEREINAFTER SET FORTH, IT IS AGREED:  
26

1    **II.    THE AGREEMENT**

2  
3       1.    Incorporation. The Recitals are incorporated herein by reference.

4       2.    Definitions.   In addition to the terms defined elsewhere in this Stipulation,  
5 as used in this Stipulation the following terms have the meanings specified below:

6           2.1    The Individual Defendants are all members of the Board of Directors  
7 of the Association. Plaintiffs have named Doe defendants in the Complaint  
8 and have indicated an intention to amend the Complaint to include the  
9 remaining members of the Board of Directors as the previously named Doe  
10 defendants. The Individual Defendants, the Doe defendants and the unnamed  
11 members of the Board of Directors are hereinafter collectively, referred to as  
12 the "Board".

13  
14          2.2    "Plaintiffs" means Doug Weiss, Ron Elsner, Stanley G. Lomnicky,  
15 Harvey E. Young and John Duvall.

16          2.3    "Defendants" means Linnton Plywood Association, Jimmy Stahly,  
17 Gail Holter, Gene Elsey and Mike Balto.

18  
19          2.4    "Parties" means collectively each of the Defendants and the Plaintiffs  
20 for themselves and/or itself and derivatively on behalf of Linnton Plywood  
21 Association.

22          2.5    "Complaint" means the action filed by Plaintiffs against Defendants in  
23 the Circuit Court of the State of Oregon for the County of Multnomah Case  
24 No. 0807-10423.

1           2.6     “Related Persons” means and includes, as the case may be, each and  
2           all of the Parties’ past and/or present directors, officers, employees, partners,  
3           principals, agents, attorneys, consultants, accountants, legal representatives,  
4           insurers or co-insurers, predecessors, successors, assigns, spouses, heirs,  
5           executors, estates, administrators and associates.

6           2.7     “Released Claims” means and includes any and all claims and causes  
7           of action, including unknown claims, charges, complaints, actions, suits,  
8           controversies, demands, rights, liabilities, costs, damages, debts, expenses,  
9           guarantees, promises and obligations of every nature and description  
10          whatsoever, whether based in law or equity, on federal, state, local, statutory  
11          or common law, rule or regulation, including, without limitation, claims for  
12          negligence, gross negligence, breach of duty of care, breach of fiduciary duty,  
13          breach of contract, declaratory judgment, judgment or injunctive relief,  
14          whether concealed or hidden, known or unknown, suspected or unsuspected,  
15          matured or not matured, contingent or fixed, asserted or that could have been  
16          asserted in the Complaint or in any other forum or proceeding by Plaintiffs in  
17          their individual or derivative capacity.

18          2.8     “Released Derivative Claims” means and includes any and all claims  
19          and causes of action, including unknown claims, charges, complaints, actions,  
20          suits, controversies, demands, rights, liabilities, costs, damages, debts,  
21          expenses, guarantees, promises and obligations of every nature and  
22          description whatsoever, whether based in law or equity, on federal, state,  
23          local, statutory or common law, rule or regulation, including, without  
24          limitation, claims for negligence, gross negligence, breach of duty of care,  
25          breach of fiduciary duty, breach of contract, declaratory judgment, judgment  
26



1 or injunctive relief, whether concealed or hidden, known or unknown,  
2 suspected or unsuspected, matured or not matured, contingent or fixed,  
3 asserted or that could have been asserted in the Complaint or in any other  
4 forum or proceeding by the Plaintiffs on behalf of the Association.

5  
6 2.9 "Shareholder" means current and former members, or the heirs of  
7 either, who own a share of the Association's stock.

8 2.10 The Stipulation will be "Effective" upon the "Effective Date", which  
9 means the first date by which all of the following events have been met and  
10 have occurred:

11 A. All of the following necessary approvals have been obtained  
12 and shall be in effect with respect to the Stipulation: (i) all individual  
13 Plaintiffs have signed this Stipulation, (ii) all individual Defendants  
14 and the Association have signed this Stipulation, and (iii) the Plaintiffs  
15 and the Board have approved the process adopted by the Court for  
16 notifying Shareholders and Former Shareholders of this Settlement.

17  
18 B. The trial Court has entered a judgment approving the  
19 Stipulation;

20 C. The judgment has become Final. For this purpose, "Final"  
21 shall mean that the time to appeal the judgment has passed without  
22 notice of appeal being filed by any party or person, or an appeal has  
23 been filed but the appeal has been dismissed with prejudice, or the  
24 appeal has been decided with no possibility of subsequent revival,  
25 modification or judicial review.  
26

1           2.11   The term "Former Shareholders" means those persons who have  
2           "Retains" on the books of the Association but no longer hold any shares of  
3           stock of the Association.

4  
5       3.     Terms. The Parties have agreed to abide by the terms of this Stipulation as  
6       follows:

7           3.1     The Parties will cooperate in preparing and filing with the trial Court a  
8           motion for approval of the Stipulation for Settlement. If this Stipulation is not  
9           approved by the Court either party may go forward with the Complaint.

10          3.2     The Plaintiffs and Individual Defendants agree that they will  
11          recommend to all Shareholders and to all current and former members the  
12          approval of this Stipulation.

13  
14          3.3     Further, the Board will recommend approval of this Stipulation to all  
15          Shareholders and all current and former members of the Association.

16          3.4     Upon the Effective Date, Plaintiffs for themselves in their individual  
17          capacity and in their representative capacity derivatively for the Association  
18          and all Related Persons release the Board from all of the Released Claims and  
19          the Released Derivative Claims except to the extent payments are due under  
20          the Modified Allocation and Distribution Plan.

21  
22          3.5     Upon the Effective Date the allocation and distribution of net proceeds  
23          from the sale and liquidation of the Association's assets shall be made as set  
24          forth in the Modified Allocation and Distribution Plan attached hereto as  
25          Exhibit A and incorporated herein by reference, and the Association's Bylaws  
26



1 shall be deemed amended with respect to such allocation and distribution by  
2 the Modified Allocation and Distribution Plan.

3  
4 3.6 Upon the Effective Date, Plaintiffs shall dismiss the Complaint with  
5 prejudice, with all Parties to bear their own costs and attorneys' fees except as  
6 provided in paragraph 3.7 below.

7 3.7 The Association shall pay \$25,000 to Jordan Schrader Ramis PC,  
8 attorneys for Plaintiffs, as partial reimbursement for Plaintiffs' attorneys' fees  
9 incurred in this matter. Such payment shall be payable together with other  
10 debts of the Association when distribution of proceeds of the sale of the Real  
11 Property is made pursuant to the Modified Allocation and Distribution Plan.

12  
13 4. Miscellaneous Provisions

14 4.1 The Parties acknowledge that the Board shall have all the decision  
15 making/authority vested to a cooperative Board of Directors under ORS  
16 Chapter 62 and such powers and authority as vested pursuant to the  
17 Association's existing Articles and Bylaws, as modified by this Stipulation.

18 4.2 The Parties agree to cooperate to the extent reasonably necessary to  
19 effectuate and implement all terms and conditions of this Stipulation, its  
20 exhibits, and all of the transactions contemplated hereby and thereby, and in  
21 obtaining all necessary approvals therefore, and to exercise their best efforts to  
22 accomplish the foregoing terms and conditions of this Stipulation.

23  
24 4.3 Each of the Parties represents and warrants that he, she or it has not  
25 assigned or transferred, or purported to assign or transfer, to any Person any  
26 claim herein released.

1           4.4     The Parties agree that terms of the settlement were negotiated in good  
2           faith by the Parties, and reflect a settlement that was reached voluntarily after  
3           consultation with competent legal counsel.

4           4.5     Neither the Stipulation nor the exhibits attached to the Stipulation, nor  
5           the settlement contained herein, nor any matter learned of in connection with  
6           the matters contemplated by the Stipulation and its exhibits or the settlement  
7           or any act performed or document executed pursuant to or in furtherance of  
8           the Stipulation and its exhibits or the settlement is or may be deemed or  
9           offered or received in evidence as a presumption, a concession, or an  
10          admission of any fault, liability, or wrongdoing, and, except as required to  
11          enforce this Stipulation, shall not be offered or received in evidence or  
12          otherwise used by any Person in this or any other lawsuit, action, litigation or  
13          proceedings, whether civil, criminal, or administrative. The foregoing  
14          covenants shall survive notwithstanding the fact that this Stipulation is not  
15          approved by the Trial Court or the settlement set forth in this Stipulation is  
16          terminated or fails to become Effective in accordance with its terms, or the  
17          Effective Date does not occur for any reason. Upon the Judgment becoming  
18          Final, any of the Defendants and/or the other Released Persons may file the  
19          Stipulation and/or the Judgment in any action that may be brought against  
20          them in order to support a defense or counterclaim based on principles of res  
21          judicata, collateral estoppel, full faith and credit, release, good faith  
22          settlement, judgment bar, or reduction, or any other theory of claim preclusion  
23          or issue preclusion or similar defense or counterclaim.

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1           4.6     This Stipulation may be amended or modified only by a written  
2           instrument signed by or on behalf of all of the Parties, or their respective  
3           successors-in-interest.

4           4.7     No provision of this Stipulation may be waived, other than by an  
5           express waiver signed by the party to be charged. No waiver of any provision  
6           in one instance shall be construed as a continuing waiver as to that provision  
7           in any other instance, nor as a waiver of any other provision of this Stipulation  
8           or any of its exhibits.

9           4.8     Except as otherwise provided herein, this Stipulation and the Exhibit  
10          attached hereto, constitute the entire agreement among the Parties with respect  
11          to the subject matter herein and therein, and no other representations,  
12          warranties or inducements have been made to any party concerning the  
13          Stipulation.

14          4.9     The Parties state that there are no additional agreements made in  
15          connection with the proposed settlement, except as stated herein.

16          4.10    Each Person executing the Stipulation hereby warrants that such  
17          Person has the full authority to do so.

18          4.11    This Stipulation may be executed in one or more counterparts. All  
19          executed counterparts and each of them shall be deemed to be one and the  
20          same instrument. A complete set of original executed counterparts shall be  
21          filed with the Court.

22          4.12    This Stipulation shall be binding upon, and inure to the benefit of, the  
23          successors and assigns of the Parties hereto.

1           4.13   The Court shall retain jurisdiction with respect to implementation and  
2           enforcement of the terms of this Stipulation, and all Parties hereto submit to  
3           the jurisdiction of the Court for purposes of implementing and enforcing the  
4           settlement embodied in this Stipulation.

5           4.14   This Agreement and the Exhibit hereto shall be considered to have  
6           been negotiated, executed and delivered, and to be wholly performed, in the  
7           State of Oregon, and the rights and obligations of the Parties to this  
8           Agreement shall be construed and enforced in accordance with, and governed  
9           by, the internal, substantive laws of the State of Oregon.  
10

11           IN WITNESS WHEREOF, this Stipulation is agreed to by:

12           DATED this \_\_\_\_ day of January, 2010.

13           \_\_\_\_\_  
14           Doug Weiss

15           DATED this \_\_\_\_ day of January, 2010.

16           \_\_\_\_\_  
17           Ron Elsner

18           DATED this \_\_\_\_ day of January, 2010.

19           \_\_\_\_\_  
20           Stanley G. Lomnicky

21           DATED this \_\_\_\_ day of January, 2010.

22           \_\_\_\_\_  
23           Harvey E. Young

24           DATED this \_\_\_\_ day of January, 2010.

25           \_\_\_\_\_  
26           John Duvall



1 DATED this \_\_\_\_ day of January, 2010.

LINNTON PLYWOOD ASSOCIATION

2 By: \_\_\_\_\_  
3 Its: \_\_\_\_\_

4  
5 DATED this \_\_\_\_ day of January, 2010.

\_\_\_\_\_  
Jimmy Stahly

6  
7 DATED this \_\_\_\_ day of January, 2010.

\_\_\_\_\_  
Gail Holter

8  
9 DATED this \_\_\_\_ day of January, 2010.

\_\_\_\_\_  
Gene Elsey

10  
11 DATED this \_\_\_\_ day of January, 2010.

\_\_\_\_\_  
Mike Balto

12  
13  
14 This Stipulation was reviewed and approved by the duly authorized attorneys for the  
15 aforementioned Parties:

16 DATED this \_\_\_\_ day of January, 2010.

JORDAN SCHRADER RAMIS PC

17  
18 \_\_\_\_\_  
Edward H. Trompke, OSB No. 843653  
19 Of Attorneys for Plaintiffs

20  
21  
22 DATED this 20 day of January, 2010.

ROBERTS KAPLAN LLP

23 \_\_\_\_\_  
24 Paul B. George, OSB No. 990090  
25 Of Attorneys for Defendants  
26



1 DATED this 20 day of January, 2010.

LINNTON PLYWOOD ASSOCIATION

2 By: Gail J Holter  
3 Its: SECRETARY / TREASURER

4  
5 DATED this \_\_\_\_ day of January, 2010.

Jimmy Stahly

6  
7 DATED this 20 day of January, 2010.

Gail J Holter  
8 Gail Holter

9 DATED this \_\_\_\_ day of January, 2010.

Gene Elsey

10  
11 DATED this \_\_\_\_ day of January, 2010.

Mike Balto

12  
13  
14 This Stipulation was reviewed and approved by the duly authorized attorneys for the  
15 aforementioned Parties:

16 DATED this \_\_\_\_ day of January, 2010.

JORDAN SCHRADER RAMIS PC

17  
18 Edward H. Trompke, OSB No. 843653  
19 Of Attorneys for Plaintiffs

20  
21  
22 DATED this \_\_\_\_ day of January, 2010.

ROBERTS KAPLAN LLP

23  
24 Paul B. George, OSB No. 990090  
25 Of Attorneys for Defendants

1 DATED this \_\_\_\_ day of January, 2010.

LINNTON PLYWOOD ASSOCIATION

2 By: \_\_\_\_\_  
3 Its: \_\_\_\_\_

4  
5 DATED this 20 day of January, 2010.

6 Jimmy Stahly  
Jimmy Stahly

7 DATED this \_\_\_\_ day of January, 2010.

8 \_\_\_\_\_  
Gail Holter

9 DATED this \_\_\_\_ day of January, 2010.

10 \_\_\_\_\_  
Gene Elsey

11 DATED this \_\_\_\_ day of January, 2010.

12 \_\_\_\_\_  
Mike Balto

13  
14 This Stipulation was reviewed and approved by the duly authorized attorneys for the  
15 aforementioned Parties:

16 DATED this \_\_\_\_ day of January, 2010.

JORDAN SCHRADER RAMIS PC

17 \_\_\_\_\_  
18 Edward H. Trompke, OSB No. 843653  
19 Of Attorneys for Plaintiffs

20  
21  
22 DATED this \_\_\_\_ day of January, 2010.

ROBERTS KAPLAN LLP

23 \_\_\_\_\_  
24 Paul B. George, OSB No. 990090  
25 Of Attorneys for Defendants  
26

1 DATED this 22 day of January, 2010.

LINNTON PLYWOOD ASSOCIATION

2 By: \_\_\_\_\_

3 Its: \_\_\_\_\_

4  
5 DATED this \_\_\_\_ day of January, 2010.

6 \_\_\_\_\_  
Jimmy Stahly

7 DATED this \_\_\_\_ day of January, 2010.

8 \_\_\_\_\_  
Gail Holter

9 DATED this 20 day of January, 2010.

10 Gene Elsey  
Gene Elsey

11 DATED this \_\_\_\_ day of January, 2010.

12 \_\_\_\_\_  
Mike Balto

13  
14 This Stipulation was reviewed and approved by the duly authorized attorneys for the  
15 aforementioned Parties:

16 DATED this \_\_\_\_ day of January, 2010.

JORDAN SCHRADER RAMIS PC

17 \_\_\_\_\_  
18 Edward H. Trompke, OSB No. 843653  
19 Of Attorneys for Plaintiffs

20  
21  
22 DATED this \_\_\_\_ day of January, 2010.

ROBERTS KAPLAN LLP

23 \_\_\_\_\_  
24 Paul B. George, OSB No. 990090  
25 Of Attorneys for Defendants  
26

1 DATED this \_\_\_\_ day of January, 2010.

LINNTON PLYWOOD ASSOCIATION

2 By: \_\_\_\_\_

3 Its: \_\_\_\_\_

4  
5 DATED this \_\_\_\_ day of January, 2010.

\_\_\_\_\_  
Jimmy Stahly

6  
7 DATED this \_\_\_\_ day of January, 2010.

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Gail Holter

8  
9 DATED this \_\_\_\_ day of January, 2010.

\_\_\_\_\_  
Gene Elsey

10  
11 DATED this 22 day of January, 2010.

\_\_\_\_\_  
*Michael Balteu*  
Mike Balteu Michael Balteu

12  
13  
14 This Stipulation was reviewed and approved by the duly authorized attorneys for the  
15 aforementioned Parties:

16 DATED this \_\_\_\_ day of January, 2010.

JORDAN SCHRADER RAMIS PC

17  
18 \_\_\_\_\_  
Edward H. Trompke, OSB No. 843653  
19 Of Attorneys for Plaintiffs

20  
21  
22 DATED this \_\_\_\_ day of January, 2010.

ROBERTS KAPLAN LLP

23  
24 \_\_\_\_\_  
Paul B. George, OSB No. 990090  
25 Of Attorneys for Defendants

## EXHIBIT A TO STIPULATION FOR SETTLEMENT

The settlement agreement between the parties calls for certain adjustments to first be made before distribution of proceeds, if any, occurs. The distribution generally anticipates refunding of retains first, payment for stock next, and any residual being distributed on a patronage basis.

The allocating adjustments which are first made and the order in which they are made is as follows:

1. First, to offset the net after tax losses for the fiscal years commencing on or after April 1, 2002;
2. Second, to reinstate patronage credits previously reduced for the fiscal year ended March 31, 2002 by the net losses for such fiscal year in the same proportion that such losses were allocated to the members; and,
3. Third, the balance (the "New Credits") to the Shareholders (those who currently are owners of record of membership stock) and Former Shareholders (those who previously were but no longer are owners of record of membership stock) who have net retains or were record owners of membership stock as of March 31, 2001, (the "Current and Prior Shareholders") on a patronage basis based on hours worked by the Current and Prior Shareholders in the following sequence: the balance up to \$1,690,000 will be allocated to the Current and Prior Shareholders in two pools: first, (a) 140/1690<sup>th</sup> to the those who have hours of work during the period from April 1, 1984 to March 31, 1991 (the "Pool 1 Current and Prior Shareholders"); and, second, (b) 1550/1690<sup>th</sup> to the those who have hours of work during the period from April 1, 1991 to March 31, 2001 (the "Pool 2 Current and Prior Shareholders"). Each allocation will be based on hours of work during the respective pool period.
4. The balance, if any, will be allocated 50% to the Pool 1 Current and Prior Shareholders and 50% to the Pool 2 Current and Prior Shareholders to be allocated among such Current and Prior Members based on the hours worked by each during their respective pool period.

Based on the foregoing adjustments, distribution to the Current and Prior Shareholders of any proceeds remaining after payment of or reservation for all liabilities or anticipated liabilities will be in the order as follows:

1. Payment to the Current and Prior Shareholders pro rata up to an amount equal to the retains as of March 31, 2001, including the retains reinstated per the above adjustment.
2. Payment of the balance, if any, to the Shareholders of record pro rata up to the par value of each outstanding share of membership stock.
3. Payment to the Current and Prior Shareholders pro rata, if any, for the New Credits, if any, created per the above adjustment.